

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TIMMIE L. HAYNES,

Petitioner,

DECISION AND ORDER

06-CV-6188L

v.

ACTING SUPERINTENDENT BRAT,

Respondent.

Petitioner, Timmie L. Haynes ("Haynes"), was convicted after a jury trial in Orleans County Court of two counts of operating a motor vehicle under the influence of alcohol and one count of first degree aggravated unlicensed operation of a motor vehicle. The County Court sentenced Haynes to concurrent terms of 1 1/3 to 4 years imprisonment on each count. Haynes' conviction was affirmed by the Appellate Division, Fourth Department and leave to appeal was denied by the Court of Appeals.

Haynes has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This Court assigned the matter to United States Magistrate Judge Victor E. Bianchini pursuant to 28 U.S.C. § 636(b). After reviewing the matter and the record, Magistrate Judge Bianchini issued a thorough Report and Recommendation (Dkt. # 22) recommending that the petition be dismissed in

all respects. Thereafter, Haynes filed a 2-page document indicating his disagreement with Magistrate Judge Bianchini's recommendation.

I have reviewed Magistrate Judge Bianchini's Report and Recommendation, and I find no basis to modify or reverse it. Magistrate Judge Bianchini carefully discussed the issues raised by Haynes, including the denial of bail pending appeal, the alleged Fourth Amendment violation and the claim that the Breathalyzer was administered to Haynes under duress. I agree with Magistrate Judge Bianchini's assessment that none of these matters warrant federal habeas corpus relief. Haynes has had a full opportunity to raise Fourth Amendment issues according to state procedural rules and neither the denial of bail under the circumstances here nor use of the Breathalyzer raise any federal constitutional issue.

For that reason, the petition for habeas corpus relief is in all respects dismissed.

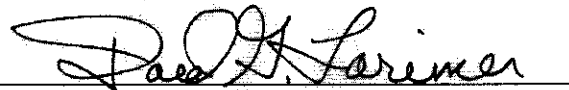
CONCLUSION

I adopt and accept the Report and Recommendation (Dkt. # 22) of United States Magistrate Judge Victor E. Bianchini.

The petition of Timmie L. Haynes for habeas corpus relief is in all respects dismissed.

I deny a certificate of appealability because petitioner has failed to make a substantial showing of a federal constitutional violation.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 18, 2007.